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October 28, 1996

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EX PARTE

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RECEIVED
OCT 28 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Dear Mr. Caton:

Re: Non-Accounting Safeguards, CC Docket No. 96-149;
Accounting Rate Policy, CC Docket No. 90-337

Today, Carl Frank of Wiley, Rein & Fielding, and I met with Diane J. Cornell, Chief, Telecommunications Division, Kathryn O'Brien, Kelly Cameron, and Douglas Galbi of the International Bureau to discuss issues summarized in the attachment. We are submitting two copies of this notice, in accordance with Section 1.206(a)(1) of the Commission's rules.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions.

Sincerely yours,

cc: Kelly Cameron
Diane J. Cornell
Douglas Galbi
Kathryn O'Brien

ACCOUNTING RATE ISSUES

ISP: THREE INTERRELATED POLICIES

- Uniform Settlements Policy
- Proportionate Return Rule
- “No Special Concessions” Rule

ACCOUNTING RATE REFORM: PRINCIPAL CONCERNS

- PacTel favors accounting rate reform, as it could lead to greater flexibility for new and established carriers and lower prices for U.S. consumers.

  - More economic prices for both U.S. and foreign retail customers.

  - Elimination of incentives for re-origination that contribute to traffic imbalance.

- Deregulation could reduce settlements deficit, although certain approaches could actually exacerbate the deficit.

  - Market lock-up could result in private retention of status quo.

- PacTel cautions, however, that deregulation may have to be accompanied by appropriate safeguards to ensure that smaller and new carriers can continue to compete.

POTENTIAL DANGERS FROM ISP DEREGULATION

- Could undermine competitiveness of American carriers, ultimately raising rates for U.S. consumers, by permitting existing large carriers to "lock-up" the market.

- If accomplished before grant of 271/214 approval, could effectively preclude entry of BOC Affiliates into international long distance, contrary to the clear intent of Congress.

- Could undermine the legal rationale for the finding of AT&T non-dominance.

ACCOUNTING RATE SAFEGUARDS - OPTIONS

- Increase competitive "threshold" for declaring foreign market deregulated.
- Adopt a foreign "market cap."
- Adopt a foreign "market cap" on a carrier-by-carrier basis.
- Deregulate only "unbalanced traffic" (with safeguards).
- Whichever strategy is chosen:
  - Provide 4 year transition.
  - Immediately exempt carriers from ISP with < 5 percent of the market.

COMPETITIVE THRESHOLD OPTION

- Do not declare foreign market competitive until foreign domestic and international long distance market is "atomized" and a single carrier does not control most traffic.

- Possible thresholds:

  - If three largest foreign carriers total more than 75 percent of these markets (or a comparable HHI), then only small carriers permitted to deviate from ISP.

  - If three largest foreign carriers total less than 75 percent of these markets (or a comparable HHI), then deregulation applies to all carriers.

COMPETITIVE THRESHOLD OPTION (CONT'D)

- Limited, and limited duration, deregulation experimentation permitted if 75 percent threshold not met, with tailored safeguards and reporting requirements.

  - One year contracts.

  - Review by FCC after one year.

  - Public accountability of contracts.

  - Monthly traffic reporting (inbound and outbound).

MARKET CAP OPTIONS

- First approach: prohibit any U.S. carrier from terminating more than a certain percentage of traffic from any particular foreign market.

- Second approach: prohibit any U.S. carrier from terminating more than a certain percentage of traffic from any particular foreign carrier.

- Either approach helps to promote true competition among U.S. carriers.

- Preserves competition overseas by preventing re-emergence of dominant players.

UNBALANCED TRAFFIC OPTION

- Retain existing ISP policy for all outbound minutes that are balanced by a foreign minute.

- Deregulate (*i.e.*, remove from the ISP) a percentage of the unbalanced minutes of each carrier.

- The allowable percentage of deregulated minutes decreases with the U.S. carrier's market share.

- Recalculate proportionate return based solely on regulated minutes.

  - Improves in-out ratio.

  - Reduces settlement deficit.

ADDITIONAL SAFEGUARDS MUST ENSURE THAT ANY REPLACEMENT FOR SETTLEMENTS ALSO IS FAIR

- Foreign termination charges can be no higher than the equivalent foreign domestic charges.

- *No* need for local carrier competitiveness - that is a different market that has nothing to do with the U.S.-international telecommunications market.

- Until carrier reaches 5 percent of outbound traffic from U.S. to a particular competitive foreign country, it should be exempt from all aspects of the ISP.

- FCC should underscore that foreign carrier conspiracies subject to U.S. antitrust law.

- Preserve opportunity for U.S. carriers to pass geographic efficiencies onto their customers.

CONCLUSION

- PacTel supports transition to FCC deregulation of the ISP in appropriate competitive circumstances.

- But, safeguards are needed to ensure that existing carriers, with long established relationships, do not distort market (market "lock-up") and actually undermine competition, ultimately raising prices.

- Ensure that small carriers (< 5 percent) can take full and immediate advantage of ISP deregulation.

- PacTel recommends adoption of interim measure(s), lasting only four years, that would provide opportunities for new and growing carriers, and thus ensure that the market remains competitive, to the benefit of U.S. consumers.